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**I.     COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**HOLIDAY BENEFITS:**

**1.     Compliance Requirements:**

- The paid holidays must be restricted to the following: New Years Day, January 1; Martin Luther King Day, the third Monday in January; Lincoln's and Washington's Birthday (President's Day), the third Monday in February; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Columbus Day, the second Monday in October; Veteran's Day, November 11; Thanksgiving, the fourth Thursday in November; Christmas, December 25; and State general election day. (Section 1-1-216, MCA)
- A.G.O. Number 116, Volume 38, held that the county commissioners may enter into a collective bargaining agreement with county employees which grants a day of paid leave in addition to those legal holidays set forth in Section 1-1-216, MCA. These days may not be accumulated as vacation days.
- If the holiday falls on an employee's day off, the employee is entitled to receive a day off with pay either on the day preceding the holiday or on another day following the holiday. Part-time employees receive pay for the holiday on a prorated basis. A short-term worker, as defined by Section 2-18-101, may not receive holiday pay. (Section 2-18-603, MCA)
- If a holiday falls during an employee's annual vacation, that day should not be counted against leave time. If counted against leave time, the employee must be given a paid day off at a later time to make up for the lost holiday. (A.G.O. Number 16, Volume 38)
- County road and bridge department employees regularly working four 10-hour days per week are entitled to eight hours' pay for all nonworked holidays. (A.G.O. No. 14, Vol. 43) Although this opinion refers to a road and bridge employee, it appears that any county employee regularly working four 10-hour days per week would also be entitled to eight hours of pay for all nonworked holidays.

**(Note: Employees of a county hospital or rest home in a third fourth, fifth, sixth, or seventh class county, or of a hospital district, are exempt from the provisions of Title 2, Chapter 18, Part 6, MCA, including those relating to holiday benefits. For any reduction in leave benefits resulting from this exemption, there must be an increase in compensation or benefits. (Section 2-18-641, MCA))**

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**I.     COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**HOLIDAY BENEFITS - continued:**

**Suggested Audit Procedures:**

- Determine, by reviewing selected payroll records, the minutes of the governing body, and other available documentation, that paid holidays were restricted to those named above.
- Test payroll records for selected part-time employees to determine if they receive pay for holidays on a prorated basis.
- Test payroll records for selected temporary, and seasonal employees to determine that they did not receive any holiday pay. If the county employs any short-term workers, as defined by Section 2-18-101, determine that they also did not receive holiday pay.
- Test payroll records to ensure that employees regularly working four 10-hour days receive only 8 hours' pay for a nonworked holiday.

**RETIREMENT SYSTEMS:**

**2.     Compliance Requirements:**

- Except as otherwise provided in Section 19-3-403, MCA, all employees shall become members of the Public Employees Retirement System (PERS) on the first day of service. (Section 19-3-401, MCA)
- The following county employees may also become members of the PERS at their option: (Section 19-3-412, MCA)
  1. elected officials who are paid on a salary or wage basis rather than on a per diem or other reimbursement basis;
  2. part-time employees whose employment does not exceed a total of 960 hours of employment covered by Title 19, Chapter 3, MCA, in any fiscal year;
  3. the chief administrative officer of any county;
  4. employees of county hospitals or rest homes.

**(Note: If an employee declines *optional* membership, the employee shall sign a statement waiving membership and file it with the employer, who shall then file the statement with the Public Employees' Retirement Board and retain a copy of the statement. (Section 19-3-412, MCA))**

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**I.     COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**RETIREMENT SYSTEMS - continued:**

**Suggested Audit Procedures:**

- Test employee payroll records and determine that there have been PERS contributions made by the county and the employee for all employees that are required to belong to PERS or who are eligible and have elected to join PERS.
- Determine if any employees have declined optional membership.
- If so, review the employer's files for a statement documenting that the employee waived membership.

**3.     Compliance Requirements:**

- The employee and/or the employer must pay withholding and/or employer payments:
  1. Public Employees Retirement System (PERS) - 6. 90% of the employee's compensation is paid by the employer and the employee The employer's contribution is, however, decreased by a State general fund contribution of 0.1% as provided in Section 19-3-319, leaving the county's actual contribution at 6.8% for fiscal years ended June 30, 1999, and after. (Sections 19-3-315 & 316, MCA)
  2. Municipal Police Officers' Retirement System (Police Retirement - Statewide Plan) - The employer's contribution is 14.41% of the compensation paid to all active members (Section 19-9-703, MCA); and the employee's contribution is 5.8% of their compensation if first employed on or before June 30, 1975, 7% if first employed after June 30, 1975, 8.5% if first employed after June 30, 1979 but before July 1, 1997, and 9% if first employed on and after July 1, 1997. An employee who elects to be covered by the guaranteed annual benefit adjustment (GABA) (19-9-1009) must pay a contribution of 9% on compensation received. (Section 19-9-710, MCA) The State's contribution is 29.37% of compensation paid to members. (Section 19-9-702, MCA)
  3. Firefighters' Unified Retirement System - The employer's contribution is 14.36% of the total compensation paid to members (**Effective July 1, 2005** – The employer's contribution is 14.36% of the compensation paid to all employees, except those properly excluded from membership.) (Section 19-13-605, MCA). The employee's contribution is 9.5% of their compensation if the employee has not elected to be covered under the guaranteed annual benefit adjustment (GABA) (19-13-1010) and 10.7% if the employee has elected to be covered under GABA. (Section 19-13-601(2), MCA). The State's contribution is 32.61% of the total compensation paid to members during the year, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave. (Section 19-13-604, MCA)

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# **I.     COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

## **RETIREMENT SYSTEMS - continued:**

### **3. Compliance Requirements - continued:**

4. Firefighters' Unified Retirement System - 1% is withheld from the member's compensation to pay the premium for group life and accidental death and dismemberment insurance. (Section 19-13-601, MCA).
5. Sheriffs' Retirement System - The employer's contribution is 9.535% of the employee's gross compensation (**Effective July 1, 2005** – The employer's contribution is 9.535% of the compensation paid to all employees, except those properly excluded from membership.) (Section 19-7-404, MCA); and the employee's contribution is 9.245% of the member's compensation (Section 19-7-403, MCA).
6. Judges' Retirement System - The county is not required to make any contribution to the Judges' Retirement System. The judge's contribution is 7% of the member's compensation (Section 19-5-402, MCA). The State's contribution is 25.81% of the compensation of each member. (Section 19-5-404, MCA)
7. Teachers Retirement System (TRS) –The employer's contribution is an amount equal to 7.47% of the earned compensation of each member employed during the whole or part of the preceding payroll period. (Section 19-20-605(1), MCA) The employee's contribution is 7.15% of the member's earned compensation. (Section 19-20-602(1), MCA) In addition, Section 19-20-604, MCA, provides that the State shall contribute 0.11% of the members' compensation. This contribution terminates when the amortization period for the system's unfunded liability is 10 years or less according to the system's latest actuarial valuation (**Note: A person elected to the office of county superintendent of schools must be an active member of the TRS. (Section 19-20-302, MCA.)**)

**(Note: The Municipal Police Officers' Retirement System and the Firefighters' Unified Retirement System will not apply to most county governments. The most common exception may be certain consolidated city/county governments.)**

### **Suggested Audit Procedure:**

- Test selected payroll reports and records to determine if the required amounts are withheld from the employees' salaries and/or paid by the employer for the purposes listed above.

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# **I. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

## **RETIREMENT SYSTEMS - continued:**

### **4. Compliance Requirements: (Applicable to PERS, SRS, MPORS, and FURS)**

- For purposes of retirement systems, "compensation" means remuneration paid ... before any pretax deductions allowed by state or federal law are made. (Sections 19-3-108(1) (PERS); 19-7-101(1)(SRS); 19-9-104(1)(MPORS) and 19-13-104(2)(FURS), MCA) (**Note:** In addition, Section 19-3-108(1), pertaining to PERS, specifically states that compensation does not include contributions to group insurance, such as that provided under 2-18-701 through 2-18-704.)
- Pre-tax deductions, including elective contributions under an IRC section 125 (Section 125) cafeteria plan, may be considered compensation for purposes of these retirement systems, but only if the following conditions are met:
  - If an employer increases a member's compensation to account for health, dental, vision, life or disability costs, the amount of the increase can be included in compensation for retirement system purposes only if the employer includes that amount, to the extent required by applicable federal and state law, in its calculation of the member's compensation for all purposes, including but not limited to federal and state income taxes, FICA, unemployment insurance, overtime, shift differentials, workers' compensation, and benefits based on compensation, such as life or disability benefits based on a multiple or percentage of annual pay.
  - The cafeteria plan must be a bona fide cafeteria plan that is operated in compliance with the following requirements of Section 125 (See details at MPERA policy website, below):
    1. The written plan document must incorporate all Section 125 operating rules and regulations and must be formally adopted before the first day of the first plan year.
    2. All participants in the plan must be employees – self-employed individuals and independent contractors cannot participate.
    3. The plan must allow participants to choose among 2 or more benefits consisting of cash and qualified benefits. A plan that does not include the option of receiving cash instead of a qualified benefit is not eligible.
    4. Employees must be allowed to choose between the qualified benefit and cash either through an affirmative election, a mandatory election, or a waiver of participation.
    5. The cafeteria plan may offer only qualified benefits as defined under Section 125(f).
    6. Elections made under the cafeteria plan must be irrevocable for an entire plan year, except to the extent mid-year election changes are permitted under Section 125.

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## **I.     COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

### **RETIREMENT SYSTEMS - continued:**

#### **4.     Compliance Requirements - continued:**

7. The cafeteria plan must satisfy the nondiscrimination requirements of Section 125.

(Montana Public Employees' Retirement Board – Policy No. BOARD Admin 05, effective date of 12/9/2005 – see <http://mpera.mt.gov/Policies.asp> ) (**NOTE:** This policy, clarifying the definition of compensation for retirement system purposes, was approved by the Board on 12/9/2005. **A participating employer must demonstrate compliance with this policy effective with the next “125 plan” year that follows 8/25/05.)**

#### **Suggested Audit Procedures:**

- Review the employer's Section 125 cafeteria plan, including the elective deferrals that are offered, and ensure that it meets the above requirements.
- For selected individuals that are members of the above retirement systems, including one or two individuals with management positions, determine the compensation (total wages) reported to the applicable retirement system. (**NOTE:** Monthly reports to the retirement systems include a listing of individuals, along with reported compensation and contributions made.) Compare this compensation to the total wages, salaries, etc. reported for worker's compensation or state unemployment purposes. If differences exist, perform appropriate follow-up procedures to determine the cause of the differences. (**NOTE:** Differing due dates for worker's compensation and state unemployment reports may result in differences that will need to be reconciled.)

### **ANNUAL VACATION LEAVE:**

(Note: Employees of a county hospital or rest home in a third fourth, fifth, sixth, or seventh class county, or of a hospital district, are exempt from the provisions of Title 2, Chapter 18, Part 6, MCA, including those relating to annual vacation leave. For any reduction in leave benefits resulting from this exemption, there must be an increase in compensation or benefits. (Section 2-18-641, MCA)

#### **5.     Compliance Requirements:**

- Permanent full-time employees earn annual vacation leave credits based on total years of employment, as follows: (Section 2-18-612, MCA)
  - a. less than 10 years service - 15 working days per year
  - b. 10 through 15 years service - 18 working days per year
  - c. 15 through 20 years service - 21 working days per year
  - d. Over 20 years service - 24 working days per year

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**I.     COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**ANNUAL VACATION LEAVE - continued:**

**5.     Compliance Requirements – continued:**

- Employees earn vacation leave from the first day of employment, but must be continuously employed for six calendar months before they are eligible to take any vacation leave. (Section 2-18-611(1), MCA)
- No vacation leave shall accrue while an employee is in a leave-without-pay status. (Section 2-18-611(4), MCA)
- Permanent part-time employees receive prorated annual vacation leave credits if they have worked for the qualifying period. (Section 2-18-611(3), MCA)
- Seasonal employees earn vacation credits. However, seasonal employees must be employed for 6 qualifying months before they may use the vacation credits. In order to qualify, seasonal employees shall immediately report back for work when operations resume in order to avoid a break in service. (Section 2-18-611(2), MCA)
- Temporary employees earn vacation leave credits but may not use the credits until after working for 6 qualifying months. (Section 2-18-611(5), MCA)
- Short-term workers, as defined 2-18-101 (**effective October 1, 2005** – as defined in 2-18-601), may not earn vacation leave credits, and time worked as a short-term worker does not apply toward the person's rate of earning vacation leave credits. (Section 2-18-611(6), MCA)

**(Note: An elected official is not considered an “employee” for the purposes of Title 2, Chapter 18, Part 6, MCA, which deals with leave time. (Section 2-18-601(4) and A.G.O. No. 4, Vol. 37)**

**Suggested Audit Procedure:**

- Test the vacation leave records for selected employees to determine if the employees are earning the appropriate number of vacation days, in accordance with the above requirements.

**6.     Compliance Requirements:**

- Annual vacation leave may be accumulated to an amount not to exceed two times the maximum number of days earned annually as of the end of the first pay period of the next calendar year. Excess vacation time is not forfeited if taken within 90 calendar days from the last day of the calendar year in which the excess was accrued. (Section 2-18-617, MCA)



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**I.     COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**ANNUAL VACATION LEAVE - continued:**

**6.     Compliance Requirements - continued:**

**(Note: See Compliance Requirement No. 5 above for the maximum annual vacation leave credits that can be earned.)**

- If an employee makes a reasonable written request to use excess vacation leave before the excess vacation leave must be forfeited and the county denies the request, the excess vacation leave is not forfeited and the county shall ensure that the employee may use the excess vacation leave before the end of the calendar year in which the leave would have been forfeited. (Section 2-18-617, MCA)

**Suggested Audit Procedures:**

- Test the vacation leave records for selected employees to determine that vacation leave balances of employees did not exceed the maximum allowed by statute as of the end of the first pay period of the next calendar year.
- If the vacation leave balance was in excess of the maximum allowed, determine that the excess was either used within 90 days from the last day of the calendar year in which the excess was accrued, or forfeited unless the employee made a reasonable request to use the leave and the request was denied.

**7.     Compliance Requirements:**

- Employees will receive pay for vacation leave not used if the employee terminates employment, has worked for the 6 month qualifying period, and has not terminated employment for a reason reflecting discredit on the employee. (Section 2-18-617(2), MCA)
- Employees are not allowed to receive pay in lieu of vacation days not used, except upon termination. (Section 2-18-617(2), MCA; A.G.O. No. 33, Vol. 25; A.G.O. No. 25, Vol. 46)
- County employees who are elected or appointed to public office are entitled to receive the vacation and sick leave benefits that accumulated during the course of their employment with the county. (A.G.O. No. 12, Vol. 38)

**Suggested Audit Procedure:**

- As part of expenditure testing for personal services, determine that any payments for unused vacation leave were only made if the employee terminated employment with the county.

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# **I.     COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

## **SICK LEAVE:**

(Note: Employees of a county hospital or rest home in a third fourth, fifth, sixth, or seventh class county, or of a hospital district, are exempt from the provisions of Title 2, Chapter 18, Part 6, MCA, including those relating to sick leave. For any reduction in leave benefits resulting from this exemption, there must be an increase in compensation or benefits. (Section 2-18-641, MCA)

## **8.     Compliance Requirements:**

- Permanent full-time employees earn 12 days of sick leave per year and there is no restriction on the number of hours that may be accumulated. (Section 2-18-618(1), MCA)
- Employees earn sick leave from the first day of employment, but must be continuously employed for 90 days before they are eligible to use any sick leave. (Section 2-18-618(1), MCA)
- An employee may not earn sick leave while in a leave- without-pay status. (Section 2-18-618(2), MCA)
- Permanent part-time employees receive prorated sick leave credits if they have worked for the qualifying period of 90 days. (Section 2-18-618(3), MCA)
- Full-time temporary and seasonal employees are entitled to sick leave benefits if they have worked the qualifying period of 90 days. (Section 2-18-618(4), MCA)
- A short-term worker may not earn sick leave credits. A short-term worker is a person who is hired by a county for an hourly wage; may not work for the county for more than 90 days in a continuous 12-month period; is not eligible for permanent status; and may not be hired into another position by the agency without a competitive selection process. (Sections 2-18-101 and 2-18-618(5), MCA)

## **Suggested Audit Procedure:**

- Test the sick leave records for selected employees to determine that the employees are earning the appropriate number of sick leave credits based on their employment status and length of employment.

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**I. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**SICK LEAVE - continued:**

**9. Compliance Requirements:**

- Except as discussed in Compliance Requirement No. 21 (VEBA), below, upon termination of employment, an employee is entitled to a lump-sum payment equal to ¼ of the pay attributed to the accumulated sick leave. The pay must be computed on the basis of the employee's salary or wage at the time of termination. (Section 2-18-618(6), MCA)
- An employee may not be paid upon termination for any remaining sick leave credits that were accrued prior to July 1, 1971. (Section 2-18-618(6), MCA)
- Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments for accumulated sick leave. (Section 2-18-618(8), MCA)
- County employees who are elected or appointed to public office are entitled to receive the vacation and sick leave benefits that accumulated during the course of their employment with the county. (A.G.O. No. 12, Vol. 38)

**Suggested Audit Procedures:**

- As part of expenditure testing for personal services, determine that any payments for unused sick leave were only made if the employee terminated employment with the county.
- Test selected payments for unused sick leave to determine that the employee was paid an amount equal to ¼ of the pay attributed to the accumulated sick leave earned after July 1, 1971, based upon the employee's salary or wage at the time of termination.

**10. Compliance Requirement:**

- A local government may establish and administer through local rule a sick leave fund into which its employees may contribute a portion of their accumulated sick leave. (Section 2-18-618(10), MCA)

**Suggested Audit Procedure:**

- If the county has established a sick leave fund, obtain a copy of the rules adopted for the fund, and determine that the fund is being administered accordingly.

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**I.     COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**JURY/WITNESS DUTY AND MILITARY LEAVE:**

**11.   Compliance Requirements:**

- A county employee who serves on jury duty or serves as a witness has two options: (Section 2-18-619, MCA)
  1. The employee shall collect all fees and allowances payable as a result of the service and forward the fees to the county accounting office. Juror and witness fees shall be applied against the amount due the employee from the county. The employee is not required to remit to the county any expense or mileage allowance paid by the court.
- OR**
- 2. The employee may elect to charge juror and witness time off against annual leave. In this case, he is not required to remit his juror or witness fees to the county. The employee is not required to remit to the county any expense or mileage allowance paid by the court.
- **Prior to April 25, 2005:** A county employee who is a member of the organized militia of Montana or of the reserve corps or military forces of the United States, and who has been an employee for a period of 6 months, shall be given leave of absence with pay for a period of time not to exceed 15 working days in a calendar year for attending regular encampments, training cruises, and similar training programs of the organized militia or of the military forces of the United States. This leave may not be charged against the employee's annual vacation time. (Section 10-1-604, MCA)
- **Effective April 25, 2005:** A county employee who is a member of the organized militia of Montana or of the reserve corps or military forces of the United States, and who has been an employee for a period of at least 6 months, must be given leave of absence with pay accruing at a rate of 15 working days in a calendar year for performing military service. This military leave may not be charged against the employee's annual vacation time. In addition, unused military leave must be carried over to the next calendar year, but may not exceed a total of 30 days in any calendar year. (Section 10-1-1009, MCA)

**Suggested Audit Procedure:**

- Through inquiry and observation, determine if any county employees were absent during the audit period for jury or witness duty, or for military training. If so, verify that the county was in compliance with the above statutes.

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**I.       COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**SALARIES OF ELECTED OFFICIALS:**

**12.   Compliance Requirements:**

**Salaries of the County Treasurer, County Clerk and Recorder, Clerk of the District Court, County Assessor, County Superintendent of Schools, County Sheriff, County Surveyor (if a salaried position), Justice of the Peace, and County Auditor**

**(\*Note: The provisions of 7-4-2503(4) pertaining to the county compensation board do not apply to a county that has adopted a charter form of government or to a charter, consolidated city-county government.)**

- The salaries of the above elected officials must be established by the county governing body based upon the recommendations of the County Compensation Board provided for in Section 7-4-2503(4). The Compensation Board shall hold hearings annually for the purpose of reviewing the compensation paid to county officers for the succeeding fiscal year. A recommended compensation schedule requires a majority vote of the Compensation Board, and at least two county commissioners must be included in the majority. A recommended compensation schedule may not reduce the salary of a county officer that was in effect on May 1, 2001. (Section 7-4-2503(4), MCA - **\*See note above at start of Compliance Requirement No. 12.**)
- When preparing a compensation schedule for elected county officials, the schedule must take into consideration county variations, including population, the number of residents living in unincorporated areas, assessed valuation, motor vehicle registrations, building permits, and other factors considered necessary to reflect the variations in the workloads and responsibilities of county officials as well as the tax resources of the county. Other factors that may be considered are the compensations paid to comparable officials in other Montana counties, other states, state government, federal government, and private enterprise. (Section 7-4-2503(4), MCA - **\*See note above at start of Compliance Requirement No. 12.**)
- The annual salary established by the county governing body, based upon the recommendations of the Compensation Board must be uniform for all county officers listed above. (Section 7-4-2503(1), MCA - **\*See note above at start of Compliance Requirement No. 12.**)
- Clerk and Recorder - If the clerk and recorder is also the county election administrator, the clerk and recorder may receive, in addition to the base salary set forth in the annual salary schedule, up to \$2,000 a year. The additional salary provided may not be included as salary for the purposes of computing the compensation of any other county officers or employees. (Section 7-4-2503(2)(d), MCA)

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**I.       COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**SALARIES OF ELECTED OFFICIALS - continued:**

**12.   Compliance Requirements - continued:**

- Superintendent of Schools – An elected county superintendent of schools must receive, in addition to the salary set forth in the annual salary schedule, the sum of \$400 a year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary set forth in the annual salary schedule, up to \$2,000 a year. (Section 7-4-2503(2)(a), MCA)
- Sheriff - The salary for the county sheriff is the salary set forth in the annual salary schedule, plus \$2,000 per year. In addition, the sheriff shall receive a longevity payment amounting to 1% of the salary set forth in the annual salary schedule for each year of service with the sheriff's department. Years of service during any year in which the salary was set at the level of salary of the prior fiscal year may not be included in any calculation of longevity. (Section 7-4-2503(2)(b) & (c), MCA)

**(Note: This additional salary amount provided for the county sheriff may not be included in the salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in Section 7-4-2508, MCA. (Section 7-4-2503(2)(c), MCA) Also see Compliance Requirement No. 16.)**

- On or before August 1, the county governing body shall by resolution adjust and fix the salaries of the county officers listed above, by adding to the annual salary provided for in 7-4-2503(1) a cost-of-living increment based upon the schedule developed and approved by the county compensation board provided for in 7-4-2503(4). (Section 7-4-2504, MCA - **\*See Note above at start of Compliance Requirement No. 12.**)
- Justice of the Peace - The board of county commissioners shall set salaries for justices of the peace by resolution and in conjunction with setting salaries for other officers. The salary of the justice of the peace may not be less than the salary for the district clerk of court in that county. However, if the court is not open for business full time, the justice's salary must be commensurate to the workload and office hours of the court. The salary of a justice of the peace may not be reduced during the justice's term of office. (Section 3-10-207, MCA)

**(Note: If the county establishes the justice court as a court of record, then the salary of the justice of the peace may not exceed 90% of the salary of a district court judge as determined in Section 3-5-211. (Sections 3-10-101 & 3-10-207)**

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**SALARIES OF ELECTED OFFICIALS - continued:**

**Suggested Audit Procedures:**

- Obtain a copy of the minutes of meetings of the County Compensation Board, if applicable, (\***See Note above at start of Compliance Requirement No. 12.**)  
Review to verify that all required factors were considered in preparing the compensation schedule, and that a majority vote was obtained prior to adoption of the recommended schedule.
- Determine the final salaries for the above officials by verifying that on or before August 1, the county governing body adjusted and fixed the salaries of the county officers listed above by resolution, by adding to the annual salary provided for in 7-4-2503(1) a cost-of-living increment based upon the schedule developed and approved by the County Compensation Board.
- As part of expenditure testing for personal services (payroll), determine that salaries paid to the above officials were established in accordance with the statutory requirements noted above, including the additional compensation required for certain designated officials.

**13.   Compliance Requirements:**

**Salaries of County Commissioners:**

**(Note: Section 7-4-2107, MCA, which is referenced in the compliance requirements below, does not apply to counties that have adopted a charter form of government.)**

- County commissioners shall receive the salary established for the clerk and recorder in Section 7-4-2503, MCA (see above), plus an additional \$2,000. (Section 7-4-2107(1), MCA)
- Each board of commissioners may elect to serve on a part-time rather than a full-time basis and receive part-time annual salaries based on the annual salary established at 7-4-2503 for the clerk and recorder. (Section 7-4-2107(2), MCA)
- If county commissioners are not on an annual salary or receiving any other compensation for a day on which they inspect roads and work on roads, the commissioners are to receive a daily salary equal to the equivalent of a daily rate for the salary established in Section 7-4-2107(2), MCA, described above, and actual expenses. (Section 7-14-2126, MCA)

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**I.     COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**SALARIES OF ELECTED OFFICIALS - continued:**

**Suggested Audit Procedures:**

- As part of expenditure testing for personal services (payroll), determine that salaries for county commissioners were established in accordance with the statutory requirements noted above.
- If the county commissioners are paid for road inspections, determine that they are paid a daily salary as discussed above, plus actual expenses, and that they do not receive an annual salary or any other compensation.

**14.   Compliance Requirements:  
Salary of County Attorney:**

- In a county with a population in excess of 30,000, the county attorney's position must be a full-time position. The salary is \$50,000 per year. (Section 7-4-2503(3)(a), MCA)
- In a county with a population of less than 30,000, the county commissioners may, with the consent of the county attorney, on July 1 of any year by resolution establish the office of county attorney as a full-time position. The salary is \$50,000 per year. (Sections 7-4-2706 and 7-4-2503(3)(b), MCA)
- In a county with a population of less than 30,000, the office of county attorney is a part-time position, unless it has been established as a full-time position as provided above. For a part-time position, the annual base salary is equal to the salary received for the fiscal year ending June 30, 2001. (Section 7-4-2503(3)(a), MCA)
- Each county attorney is entitled to an increase in salary based upon the schedule developed and approved by the Compensation Board as provided in 7-4-2503(4), MCA. (Section 7-4-2503(3)(c), MCA) **(Note: The provisions of 7-4-2503(4) pertaining to the county compensation board do not apply to a county that has adopted a charter form of government or to a charter, consolidated city-county government. (Section 7-4-2503(4)(d), MCA))**
- The salary of the county attorney is payable one-half from the county general fund and one-half from the State Department of Justice. The State's share of the salary, payable every 2 weeks, is paid directly to the attorney and does not flow through the county treasury. If the county has not supplied information concerning any scheduled or proposed increase in the attorney's salary to the Department of Justice in a timely manner, the county is responsible for any increased salary. (Section 7-4-2502(2)(a), MCA.



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**I.     COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**SALARIES OF ELECTED OFFICIALS - continued:**

**Suggested Audit Procedure:**

- As part of expenditure testing for personal services (payroll), determine that the salary for the county attorney was established in accordance with the statutory requirements noted above.

**15.   Compliance Requirements:**

**Compensation for Other Officials:**

- Surveyor - If not receiving a salary under 7-4-2812, MCA, the county surveyor may collect and receive for his own use, for official services, the fees and emoluments prescribed by law. (Section 7-4-2501, MCA) The county commissioners set the county surveyor's fees by resolution. (Section 7-4-2821)
- Public Administrator: The public administrator may collect and receive for his own use, as full compensation for official services, the fees and emoluments prescribed by law. (Sections 7-4-2501 & 72-15-301, MCA) (**Note: See CNTY-14 for public administrator fees.**)
- The board of county commissioners may fix the compensation of all county officers not otherwise fixed by law, and may, in conjunction with setting salaries for other officers as provided in Section 7-4-2504(1), MCA, set their salaries at the prior fiscal year level. (Section 7-4-2502(3), MCA)
- When two or more county offices are consolidated under a single officer, that officer shall receive as salary an amount to be determined by the board of county commissioners. The salary, however, must not be more than 20% higher than the highest salary provided by law to be paid to any officer whose duties he is required to perform by reason of such consolidations. The board shall, in June of each fourth year, adopt a resolution fixing the salary of such officer for the term beginning with the first Monday in January immediately following the adoption of such resolution. (Section 7-4-2312, MCA)

**Suggested Audit Procedure:**

- As part of expenditure testing for personal services (payroll), determine that the compensation for county officials not addressed in Compliance Requirements No. 12 through 14 was established and paid in accordance with the statutory requirements noted above.

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**I.     COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**SALARIES OF DEPUTIES & ASSISTANTS:**

**16.   Compliance Requirements:**

- The salary for the deputy or assistant of the following officers may not be more than 90% of the salary of the officer under whom the deputy or assistant is serving: clerk and recorder, clerk of district court, treasurer, county attorney, and auditor. The salary of the deputy county attorney, including longevity provided under 7-4-2503(3)(d) (see below), may not exceed the salary of the county attorney under whom the deputy is serving. (Section 7-4-2505, MCA)
- The salaries of deputies and assistants for the county superintendent of schools may be set at 90% or less of the salary of the county superintendent. (Section 20-3-203, MCA)
- After 4 years of service, a deputy county attorney is entitled to a salary increase of \$1,000 on the anniversary date of employment as deputy county attorney. After 5 years of service, the salary will be increased by an additional \$1,500 on the anniversary date of employment. After completing 6 years of service and for each additional year of service up to completion of the 11th year of service, there will be an additional annual increase in salary of \$500. (Section 7-4-2503(3)(d), MCA)
- The undersheriff's salary must be 95% of the salary of the sheriff. The deputy's salary will be established as a percentage of the salary of the sheriff based on the population of the county, as follows:

below 15,000	85% to 90%
15,000 to 29,999	76% to 90%
30,000 to 74,999	74% to 90%
75,000 and over	72% to 90%

 (Section 7-4-2508, MCA)
- The longevity payments for a sheriff provided in Section 7-4-2503(2)(c) (See Compliance Requirements Number 12 and 16 above) are not to be included in the base salary used to compute the compensation for undersheriffs and deputy sheriffs. (Section 7-4-2503(2)(c), MCA)
- A deputy sheriff or undersheriff is entitled to receive a longevity payment amounting to 1% of the minimum base annual salary for each year of service with the office, but years of service during any year in which the salary was set at the same level as the salary of the prior fiscal year may not be included in the calculation of longevity increases. This payment shall be made in equal monthly installments. (Section 7-4-2510, MCA)

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**I.     COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**SALARIES OF DEPUTIES & ASSISTANTS - continued:**

**Suggested Audit Procedure:**

- As part of expenditure testing for personal services (payroll), determine that salaries for deputies and assistants were established in accordance with the statutory requirements noted above.

**17.   Compliance Requirements - Effective October 1, 2005:**

- A deputy sheriff who is injured in the performance of the deputy sheriff's duties and who requires treatment for injuries that render the deputy sheriff unable to perform the deputy sheriff's duties must be paid by the county the difference between the deputy sheriff's net salary, following adjustments for income taxes and pension contributions, and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first. (Section 7-32-2113, MCA)
- Whenever, in the opinion of the county and supported by a health care provider's opinion, the deputy sheriff is able to perform specified types of light duty, payment of the officer's partial salary amount under 7-32-2113 must be discontinued if the deputy sheriff refuses to perform light duty when it is available and offered to the deputy sheriff. For this purpose, the deputy sheriff may be transferred to another department or agency within the county. (Section 7-32-2114, MCA)
- When a member of the Sheriff's Retirement System (SRS) receives compensation from both the member's employer and the workers' compensation program under the provisions of 7-32-2113, the member's compensation reported to the SRS by the employer is the same as if the member was in active service, and the member and employer contributions for the SRS must be calculated and paid on that total compensation. (Section 19-7-410, MCA)

**Suggested Audit Procedure:**

- Through inquiry and observation, determine if the County had any injured deputy sheriffs on disability leave. If so, determine if the County was in compliance with the procedures and payments discussed above.

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**I. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**COURT REPORTERS:**

**18. Compliance Requirements:**

- A district court judge may appoint a court reporter in one of the following three ways: (Section 3-5-601(2), MCA)
  1. The court reporter may be appointed as a state employee foregoing transcription fees. The reporter is subject to classification and compensation as determined by the judicial branch personnel plan adopted under Section 3-1-130, MCA, and must receive state employee benefits and expenses as provided in Title 2, chapter 18, MCA. The state shall provide all equipment and supplies for the reporter's use. Any transcription fees paid for the reporter's services must be forwarded to the Montana Department of Revenue for deposit in the state general fund. (Section 3-5-601, MCA)
  2. The court reporter may be appointed as a state employee retaining transcription fees. The reporter is subject to classification and compensation as determined by the judicial branch personnel plan adopted under Section 3-1-130, MCA, and must receive state employee benefits and expenses as provided in Title 2, chapter 18, MCA. The state shall provide equipment and supplies for the reporter's use, except that the reporter shall provide and maintain all equipment and supplies for performance of transcription duties unless the reporter uses state-owned equipment under a shared arrangement. A reporter may not receive overtime for time spent on preparation of transcripts for which the reporter retains fees. The reporter shall retain all transcription fees paid for the reporter's transcription services. (Section 3-5-601(3) & (4)(b), MCA).
  3. The court reporter may be appointed as an independent contractor, and must contract with the judicial branch as such. The reporter shall provide and maintain the reporter's necessary equipment and supplies, retain all transcription fees paid for the reporter's transcript preparation services, and maintain professional liability insurance and workers' compensation coverage. In judicial districts comprising more than one county, the reporter is allowed actual and necessary travel expenses as provided in Sections 2-18-501 through 503, MCA, when on official business to a county of the reporter's judicial district other than the county in which the reporter resides. The reporter's compensation and travel expenses shall be paid by the state-funded district court program. (Sections 3-5-601 & 3-5-602, MCA)
- Court reporters who are employed by the county on June 30, 2002, and who are transferred to state employment by the provisions of Section 3-5-601(2)(a) & (b), MCA, become state employees on July 1, 2002. The reporter may elect to become a member of the state employee benefit plan on July 1, 2002, or remain on the

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# **I. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

## **COURT REPORTERS - continued:**

### **18. Compliance Requirements - continued:**

employee's county benefit plan through the remainder of the plan year in effect on June 30, 2002. If the reporter elects to remain on the county benefit plan, the monthly state contribution toward insurance benefits must be transferred to the county benefit plan. The employee must pay any benefit costs in excess of the state contribution. Accumulated sick and vacation leave and years of service with a county become an obligation of the state as of July 1, 2002, but any liability for accumulated compensatory time are not transferred to the state and remains an obligation of the county that employed the employee prior to the transfer. (Section 57, Ch. 585, L. 2001)

#### **Suggested Audit Procedure:**

- As part of expenditure testing for personal services (payroll), determine that salaries (or contract compensation), benefits, and other allowed compensation for the court reporter(s) were established and paid in accordance with the statutory requirements noted above, and as required by the particular option as outlined above under which the court reporter is providing the required services.

## **OVERTIME:**

### **19. Compliance Requirements:**

- Generally, an employer may not employ any employee for a workweek longer than 40 hours unless the employee receives compensation for employment in excess of 40 hours in a workweek at a rate of not less than 1 ½ times the hourly wage rate at which the employee is employed. (Section 39-3-405, MCA)  
(Note: This provision generally agrees to the overtime provisions of the Federal Fair Labor Standards Act (FLSA), which covers virtually all local government employees. (29 CFR §553.3) Elected officials and their appointees are exempt from the FLSA. (29 CFR §553.10) In addition, there are partial exemptions from overtime requirements of the FLSA for fire protection, law enforcement, and hospital employees (see discussions below) (29 CFR §553.32(b)))
- The overtime provisions of Section 39-3-405 do not apply to the following: (Section 39-3-406, MCA):
  1. An individual employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Administrative Rules of Montana 24.16.201 through 24.16.205. (Note: These Administrative Rules (ARMS) can be accessed through the Secretary of State's web page at <http://sos.mt.gov/> or the direct link is <http://arm.sos.mt.gov/> ). (Section 39-3-406(1)(j), MCA)

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**I. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**OVERTIME - continued:**

**19. Compliance Requirements - continued:**

2. Pursuant to Sections 7-4-2509(1) or 7-32-115, MCA, an employee of a sheriff's office or department of public safety who is working under an established work period in lieu of the workweek provided in 39-3-405 (**see first compliance requirement above**) or 7-32-2111 for determining when an employee may be paid overtime. Per Sections 7-4-2509(1) or 7-32-115, a county sheriff's office or department of public safety may establish a work period other than the workweek provided in 39-3-405 or 7-32-2111, for determining when an employee may be paid overtime. (**Note: Section 7-32-2111, MCA states that any person employed as a deputy sheriff of a first- or second-class county shall not be forced to work in excess of 40 hours per week except in case of an emergency and shall be entitled to 2 days off in each 7-day period.**)

The aggregate of all work periods in a year may not exceed 2,080 hours. (Section 7-4-2509, MCA)

The board of county commissioners may by resolution establish that any undersheriff, deputy sheriff, or public safety department employee who works in excess of his regularly scheduled work period will be compensated for the hours worked in excess of the work period at a rate to be determined by that board of county commissioners. (Section 7-4-2509, MCA)

However, the Federal Fair Labor Standards Act (FLSA) requires that law enforcement employees must be paid overtime for work in excess of 171 hours in a 28-day work period. In the case of such employees who have work period of at least 7 but less than 28 consecutive days, overtime compensation is required when the ratio of the number of hours worked to the number of days in the work period exceeds the ratio of 171 hours to 28 days (i.e.,  $171 \text{ hours} \div 28 \text{ days} = 6.1$ ). A county employee engaged in law enforcement activities, if the county employs less than five employees in law enforcement activities, is completely exempt from the overtime provisions of the FLSA. (29 CFR §553.201) (**Note: "employee in law enforcement activities" is defined in detail in 29 CFR §553.211 & .212**)

3. A county employee who is working under a work period not exceeding 40 hours in a 7-day period established either through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 ½ time the hourly wage rate for the employee. (Section 39-3-406(2)(o), MCA)

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# **I. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

## **OVERTIME - continued:**

### **19. Compliance Requirements - continued:**

4. An employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 ½ times the hourly wage rate for the employee. (Section 39-3-406(2)(p), MCA)
  
5. A firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative. (Section 39-3-406(2)(q), MCA)  
However, the FLSA requires that fire protection employees must be paid overtime for work in excess of 212 hours in a 28-day work period. In the case of such employees who have work period of at least 7 but less than 28 consecutive days, overtime compensation is required when the ratio of the number of hours worked to the number of days in the work period exceeds the ratio of 212 hours to 28 days (i.e.,  $212 \text{ hours} \div 28 \text{ days} = 7.6$ ). A county employee engaged in fire protection activities, if the county employs less than five employees in fire protection activities, is completely exempt from the overtime provisions of the FLSA. (29 CFR §553.201) (**Note: “employee in fire protection activities” is defined in detail in 29 CFR §553.210 & .211**)
  
6. A county employee employed, at the employee’s option, on an occasional or sporadic basis in a capacity other than the employee’s regular occupation. Only the hours that the employee was employed in a capacity other than the employee's regular occupation may be excluded from the calculation of hours to determine overtime compensation. (Section 39-3-406(2)(x), MCA)
  
- Local government employees who are covered by the FLSA may reach agreement with their employers to receive compensatory time in lieu of cash overtime. Compensatory time in lieu of cash must be at the rate of not less than 1 ½ hours of compensatory time for each hour of overtime worked. (29 CFR §553.20; A.G.O. No. 58, Vol. 41)

**(Note: State and federal law do not require the local government to make the accrual or use of compensatory time available to “exempt” employees (i.e., individuals employed in a bona fide executive, administrative, or professional capacity as discussed above). However, the local government may establish a policy of permitting compensatory time to be earned by “exempt employees” on an**

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**I. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**OVERTIME - continued:**

**19. Compliance Requirements - continued:**

**“hour-for-hour” basis for time in a pay status in excess of 40 hours in a workweek. Accrued time may be taken as approved time off at a later date.)**

1. As a condition for use of compensatory time in lieu of overtime payment in cash, an agreement or understanding must be reached prior to the performance of work. A copy of this agreement or understanding should be kept on file, or if not in writing, a record of its existence should be kept. (29 CFR §553.23(a) & .50)
2. Generally, no more than 240 hours of compensatory time may be accrued. This 240 hour limit is based on 160 hours actual overtime worked. Any additional overtime hours worked over this limit must be paid in cash overtime. (29 CFR §553.21 & .22)
3. However, for those employees engaged in public safety activities (i.e., law enforcement and fire fighting), emergency response activities or seasonal activities, no more than 480 hours of compensatory time may be accrued. The 480 hour limit is based on 320 hours actual overtime worked. Any additional overtime hours worked over this limit must be paid in cash overtime. (29 CFR §553.24)
4. Any employee who has accrued compensatory time and requested use of it must be permitted to use such time off within a reasonable period after making the request, if such use does not unduly disrupt county operations. An employee must not be coerced to accept more compensatory time than an employer can realistically expect to be able to grant. (29 CFR §553.25)
5. Upon termination of employment, an employee must be paid for unused compensatory time at a rate not less than the average regular rate received by the employee during the last 3 years of employment, or the final regular rate received by the employee, whichever is higher. (29 CFR §553.21 & .27)
6. The county should keep a record of compensatory time earned each workweek, compensatory time used each workweek, and the number of hours of compensatory time compensated in cash and the total amount and date paid, for each employee subject to compensatory time provisions. (29 CFR §553.50)



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## **I.     COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

### **OVERTIME - continued:**

#### **Suggested Audit Procedures:**

- As part of payroll testing, determine if any employees worked in excess of 40 hours in a workweek during the audit period. If so, verify that either cash overtime at the rate of 1 ½ times the employee's regular rate was paid or that compensatory time was accrued for that employee.

**(Note to Auditor: For additional information regarding the FLSA see the U.S. Department of Labor's Web site at <http://www.dol.gov/esa/whd/flsa/> .)**

- Verify that employees that work within one of the exception activities above and that work over the specified number of hours in a work period either (1) receive overtime pay at the rate of 1 ½ times the employee's regular rate or (2) accrue compensatory time at the rate of 1 ½ hours for each overtime hour worked. **(Exception: An individual employed in a bona fide executive, administrative, or professional capacity may receive compensatory time on an "hour-for-hour" basis for time in a pay status in excess of 40 hours in a workweek if the local government provides for such a policy. Accrued compensatory time may be taken as approved time off at a later date.)**
- Verify that the county maintains the necessary records for compensatory time. Based on a review of these records, verify that compensatory time is not accrued in excess of the limitations noted above. If compensatory time accrued exceeds these limitations, verify that the excess amount is paid in cash.

### **GROUP INSURANCE**

#### **20. Compliance Requirements:**

- Upon approval by two-thirds vote of officers and employees, the county shall enter into group hospitalization, medical, health, including long-term disability, accident or group life insurance contracts or plans for the benefit of the officers and employees and their dependents. (Section 2-18-702(1)(a), MCA)

**(Note: For purposes of this compliance requirement, an employee includes a permanent full-time employee; a permanent part-time employee who is regularly scheduled to work 20 hours or more a week; a seasonal full-time employee who is regularly scheduled to work 6 months or more a year or who works for a continuous period of more than 6 months a year although not regularly scheduled to do so; a seasonal part-time employee who is regularly scheduled to work 20 hours or more a week for 6 months or more a year or who works 20 hours or more a week for a continuous period of more than 6 months a**

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**I. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**GROUP INSURANCE - continued:**

**20. Compliance Requirements - continued:**

**year although not regularly scheduled to do so; elected officials; a temporary full-time employee who is regularly scheduled to work more than 6 months a year, who works for a continuous period of more than 6 months a year although not regularly scheduled to do so, or whose temporary status is defined through collective bargaining; and a temporary part-time employee who is regularly scheduled to work 20 hours or more a week for 6 months or more a year, who**

**works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so, or whose temporary status is defined through collective bargaining. (Section 2-18-701, MCA))**

- The board of county commissioners may, at its discretion, consider the employees of a private, nonprofit economic development organization to be employees of the county solely for the purpose of participation in a group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans. The board may require such an employee or organization to pay the actual cost of coverage or may, at its discretion and subject to any restriction on who may be a member of a group, pay all or part of the cost of coverage of the employee of the organization. The board of county commissioners of a third, fourth, fifth, sixth, or seventh class county may, at its discretion, exempt employees of a county hospital or county rest home from participation in group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans. (Section 2-18-702(1)(b) & (1)(c), MCA)
- The county's premium contributions may exceed but may not be less than \$10 a month. (Section 2-18-703(3), MCA)
- An increase in the county's property tax levy for premium contributions beyond the amount of contributions in effect at the beginning of the last fiscal year is not subject to the mill levy calculation limitation provided for in Section 15-10-420, MCA, although a public hearing must be held regarding any proposed increases as required by 2-9-212(2)(b), MCA. (Sections 2-18-703(3) & 2-9-212, MCA)
- Unused employer contributions for any employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible or to increase the reserves of the group. (Section 2-18-703(5), MCA)

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**I.     COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**GROUP INSURANCE - continued:**

**20.   Compliance Requirements - continued:**

- Group insurance plans are not prohibited from providing greater or additional contributions for insurance benefits to employees with dependents than to employees with no or fewer dependents. (Sections 2-18-702(1)(a) & 2-18-703(6), MCA)
- A board of county commissioners, in the exercise of its general authority to manage the business of the county and to set compensation for its employees, may offer payment to county employees in lieu of an employee's participation in a group health insurance plan. (A.G.O No. 11, Volume 51)  
(NOTE: Although Section 2-18-703(2), MCA prohibits a *state* employee from receiving payment in lieu of participation in a state-sponsored group benefit plan, there is no similar prohibition for local government employees.)
- A.G.O. No. 54, Volume 37, held that a city may not contribute to individual employees' insurance plans but must contribute to a city group insurance plan. Although this A.G.O. is specific to cities, it appears that it would also be applicable to counties.

**Suggested Audit Procedures:**

- If a county has entered into a group insurance plan for its employees, determine that only eligible employees, as defined above, are allowed to participate in the plan.
- Verify that the county's premium contribution to the plan is at least \$10 a month per employee.
- If there has been an increase in the county's property tax levy for premium contributions beyond the amount of contributions in effect at the beginning of the last fiscal year, which is not subject to the mill levy calculation limitation provided for in 15-10-420, determine that a public hearing was held regarding any proposed increases.

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**I.     COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION (VEBA):**

**21.   Compliance Requirements:**

**(Note: The VEBA, which is centrally administered by the Montana Department of Administration, provides members with individual health care expense trust accounts to pay qualified health care expenses of members, their dependents, and their beneficiaries. Under the plan, employer contributions, investment earnings, and payments for qualified health care expenses are tax-exempt. A local government, however, is not prohibited from establishing a similar program as an alternative or in addition to participation in the State VEBA plan discussed here. For more information on VEBA see: <http://www.montanaveba.org/>.)**

- As either initiated by the local government (the contracting employer), or at the request of at least 25% of its employees, the local government may hold an election to determine whether all the employees, or a specified group of employees, will form an association for the purpose of participating in the plan. If a majority of employees vote to form an association, all current and subsequently-hired employees must become plan members. The local government shall enter into a contract with the Department of Administration, and shall operate the association in a manner prescribed by that Department. (Section 2-18-1310, MCA)
- In a manner prescribed by the Department, a local government shall provide for a plan member to annually designate how many hours, if any, of the member's sick leave will be automatically converted to an employer contribution to the member's account each pay period. A member may annually convert only sick leave hours in excess of 240 hours, and no more than the maximum prescribed by the local government. (Section 2-18-1311(1) & (2)(a), MCA)
- When the member's employment is terminated, the member's entire unused sick leave balance must be automatically converted to an employer contribution to the member's account, and may not be paid as a lump sum under Section 2-18-618(6), MCA (See Compliance Requirement No. 8, above). (Section 2-18-1311(2)(b), MCA)
- The amount of the employer contribution for hours converted must be equal to ¼ of the accumulated sick leave, and must be computed on the basis of the employee's salary or wage at the time of the conversion. A member may not later receive, as sick leave credit or as a lump-sum payment, amounts contributed to the member's account pursuant to 2-18-1311. (Section 2-18-1311 (3), MCA)

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# **I. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

## **VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION (VEBA) - continued:**

### **Suggested Audit Procedures:**

- Through inquiry, determine whether the county's employees, or specified group of employees, voted to become members of the "Voluntary Employees' Beneficiary Association (VEBA)" administered by the Department of Administration. If so, obtain and review a copy of the contract with the Department.
- Verify that all employees, or all members of the specified group of employees, are members of the plan; and that they have, in a manner prescribed by the Department, designated annually how many hours, if any, of each member's sick leave will be automatically converted to an employer contribution to the member's account each pay period.
- Determine that each member annually converts only sick leave hours in excess of 240 hours, and no more than the maximum prescribed by the local government.
- Determine that when the member's employment is terminated, the member's entire unused sick leave balance is automatically converted to an employer contribution to the member's account, and that it is not paid as a lump sum
- Verify that contributions are calculated correctly, and that members do not later receive sick leave credits or lump-sum payments for amounts contributed.

## **PAYROLL WITHHOLDINGS AND EMPLOYER PAYMENTS:**

### **State and Federal Tax Withholdings:**

#### **22. Compliance Requirements:**

(Note: Compliance Requirements for State tax withholding guidelines are from "Employer's Tax Guide"<sup>1</sup> produced by the Montana Department of Revenue. See "Publication 15, Circular E, Employer's Tax Guide" produced by the Internal Revenue Service for Federal tax withholding guidelines.) {<sup>1</sup>The web link for the "Employer's Tax Guide" is

[http://mt.gov/revenue/formsandresources/forms/Employer's Tax Guide.pdf](http://mt.gov/revenue/formsandresources/forms/Employer's_Tax_Guide.pdf) }

- The amount of state and federal taxes withheld from an employee's wages is based on the marital status and withholding allowances indicated on the employee's federal Form W-4. An employee can have a separate W-4 for state purposes, and may elect to have a different number of allowances for federal and state purposes. If line 5 of the Form W-4 is left blank, the employee is deemed to be claiming zero withholding allowances. Withholdings may not be based on a fixed dollar amount or percentage, although the employee may specify an additional dollar amount to be withheld.

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**I. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**PAYROLL WITHHOLDINGS AND EMPLOYER PAYMENTS - continued:**

**State and Federal Tax Withholdings - continued:**

**22. Compliance Requirements - continued:**

- Although an employee may claim exemption from federal income tax withholding, there is no such provision for exemption from Montana state income tax withholding. If a federal exemption is claimed, wages for that employee are still subject to Social Security and Medicare taxes.
- The local government is required to remit its withholding payments to the State on a schedule (quarterly, monthly, or accelerated) determined by the State. The most common remittance schedules are quarterly or monthly.
- Salaries and wages of elected county officials are subject to State income tax withholding.
- Payments to employees that are not subject to State income tax withholding include:
  1. Employee business expense reimbursements, as long as each reimbursement is entered separately in the county's records and there is documentation that the expenses were incurred while conducting business. Reimbursements must be based upon actual, receipted expenses, or on meal, lodging and mileage amounts allowed to State employees.
  2. Employer payments or contributions for employee benefit group plans, such as retirement, sickness or accident disability, medical, hospitalization or death.
  3. Employee contributions to qualifying annuity contracts, such as annuity plans or deferred compensation plans.
  4. Employee contributions to flexible spending accounts for medical and/or dependent care and health, dental and/or vision insurance premiums that exceed the employer's contribution.  
**(Note: Technically, these employee "contributions" are actually payments deducted from an employee's gross pay for cafeteria (aka Section 125) plans. Typically, the payroll records will show "gross wages", "Medicare wages", "Social Security wages", etc. to show the amount of applicable wages to which the tax rate is applied.)**

**Suggested Audit Procedures:**

- As a part of payroll testing, verify that there is a current W-4 form on file for each selected employee.

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# **I. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

## **PAYROLL WITHHOLDINGS AND EMPLOYER PAYMENTS - continued:**

### **State and Federal Tax Withholdings - continued:**

#### **Suggested Audit Procedures - continued:**

- For selected individuals, verify that payments either are, or are not, subject to withholding as described above.
- If considered necessary, verify that withholdings for selected individuals agree to withholdings in the State Withholding Tax Tables that coincide with the marital status and allowances designated on the individual's Form W-4.
- If deemed necessary, test federal withholdings for compliance with Federal laws and regulations as specified in "Publication 15, Circular E, Employer's Tax Guide".

### **State Unemployment Insurance:**

#### **23. Compliance Requirements:**

**(Note: Compliance Requirements are from "Employer's Tax Guide" produced by the Montana Department of Revenue)**

- All local governments must be covered by State unemployment insurance. **(Note: Local governments are exempt from Federal unemployment insurance.)**  
Unemployment insurance contributions are paid by the employer, and no part of the contributions may be withheld from an employee's wages. Local governments may choose coverage either as a "reimbursable employer", or may choose to make tax payments based on the experience rating system where their tax rate is applied to total wages. Whatever option is elected, the local government must also pay a 0.05% (.0005) Administrative Fund Tax on total wages paid each quarter.  
(Section 39-51-1103, & 404, MCA)
  1. Reimbursable Employer – the local government is required to submit quarterly wage reports on total wages paid each quarter. The Montana Department of Labor and Industry then notifies the local government monthly of the benefits charged to the local government's account. These charges may be paid monthly or the entire quarterly charges may be paid within thirty days following the end of the quarter.
  2. Experience Rating System – The local government is required to pay taxes, at a rate calculated by the State, on the wages of each employee up to and including the taxable wage base for that year. The taxable wage base is listed in the upper left hand corner of the quarterly report form. The taxable wage base for calendar year 2001 was, \$18,200; 2002 was \$18,900; 2003 was \$19,700; 2004 was \$20,300; 2005 was \$21,000; and 2006 was \$21,600.) Once the individual

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**I. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**PAYROLL WITHHOLDINGS AND EMPLOYER PAYMENTS - continued:**

**State Unemployment Insurance - continued:**

**23. Compliance Requirements - continued:**

employee's wages reach the taxable wage base for the year, the employee's quarterly wages are still reported, but taxes are no longer paid on them.

- The following are considered to be wages for purposes of unemployment insurance:
  1. Holiday pay, vacation pay, sick leave payments, overtime cash payments, severance or continuation pay, and back pay.
  2. Payments deducted from an employee's gross pay for cafeteria plans, deferred compensation plans, and sickness, disability, medical or hospital insurance plans.

Also, state and federal income tax withholdings and social security taxes do not reduce reportable wages.

(Section 39-51-201, MCA)

- The following are not considered to be wages for purposes of unemployment insurance:
  1. Contributions made by the employer for retirement, sickness or accident disability, medical, hospitalization or death employee benefit plans, if employees may not elect to receive cash instead of coverage. The plan must be one established for all employees or for a specific class of employees. Employer contributions for all other employee benefit plans are reportable as wages.
  2. Payments made to reimburse an employee for business expenses, if certain rules are followed. Each reimbursement must be entered separately in the employer's records, and there must be documentation that the expense was incurred while conducting business. The reimbursement must be based upon actual, receipted expenses, or upon the per-diem and mileage amounts allowed to State employees.
  3. Salaries and wages of elected public officials.

(Section 39-51-201(23)(b), MCA)

**Suggested Audit Procedure:**

- Review selected quarterly unemployment payroll reports to verify that all wages, as defined above, are included. Also, verify that employer contributions for employee benefit plans described above, employee business expense reimbursements, and salaries and wages of elected public officials are not included in the payroll reports.



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**I.     COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**PAYROLL WITHHOLDINGS AND EMPLOYER PAYMENTS - continued:**

**Workers' Compensation:**

**24.   Compliance Requirements:**

- The Workers' Compensation Act of Montana, with limited exceptions, requires all employers to cover their full-time, part-time, seasonal, or occasional employees with workers' compensation insurance. All workers' compensation insurance premiums are to be paid by the employer. Employers may not deduct any part of the premiums from employees' pay. (Section 39-71-406, MCA)
- An employer has three options for coverage: Plan 1 - self insured, Plan 2 – private insurance companies, and Plan 3 – Montana State Fund. The premium that an employer pays is based on a percentage of the employees' payroll, which is in turn based on a class code rate and an experience modification factor. The payment schedule is spelled out in the individual employer's insurance policy. (Title 39, Chapter 71, Parts 21, 22 & 23)
- All elected and appointed paid public officers are considered to be employees for purposes of workers' compensation coverage. (Section 39-71-118(1)(a), MCA) An enrolled member of a volunteer fire department of a 2nd-class city, or a person who provides ambulance services for a local government is also considered to be an employee for this purpose. (Section 39-71-118(1)(g), MCA)
- Generally, a volunteer is not considered to be an employee for purposes of workers' compensation coverage. (Section 39-71-118(2)(c))
- However, a volunteer firefighter who is an enrolled and active member of a fire company organized and funded by a county, may, at the discretion of the county commissioners, be considered an employee for this purpose. (Section 39-71-118(4) & (7))
- Each law enforcement agency that utilizes reserve or special services officers shall provide full workers' compensation coverage while the officers are providing actual service for a law enforcement agency. (Section 7-32-203, MCA)

**(Note: For example, members of a recognized search and rescue unit are auxiliary officers and must be provided full workers' compensation coverage when engaged in a search, training, or testing operation called and supervised by the Sheriff. A.G.O. No. 97, Volume 42)**

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**I.     COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**PAYROLL WITHHOLDINGS AND EMPLOYER PAYMENTS - continued:**

**Workers' Compensation - continued:**

**Suggested Audit Procedures:**

- As part of payroll testing, verify that no part of the employer's insurance premium is paid through employee payroll deductions.
- Verify that all employees, including elected and appointed county officials, are covered by workers' compensation insurance. Verify also that any volunteer firefighters or reserve officers with the county sheriff's office are covered by workers' compensation insurance if they meet the criteria discussed above.

**Social Security and Medicare:**

**25.   Compliance Requirements:**

- Local government employees are covered by Social Security and Medicare in one of two ways.
  - a. One way is through a federal-state agreement called a Section 218 agreement (authorized under Section 218 of the Social Security Act). Those agreements should specify the Social Security and Medicare coverage for local government employees. There may be exclusions for certain groups of employees.
  - b. The other way is under the mandatory provisions of federal law. Employees hired (or rehired) after March 31, 1986, must have Medicare coverage unless the law specifically excludes them. Employees in continuous employment before April 1, 1986, who are members of a public retirement system, may be covered for Medicare under a Section 218 agreement at the state's option.
- Another law requires state and local government employees not covered by a Section 218 agreement or a public retirement system to be covered by Social Security and Medicare, unless the law specifically excludes them.

**(Note: More detailed information on Social Security and Medicare coverage for local government employees can be obtained from the following:**

**Social Security Administration  
10 West 15th Street, Suite 1600  
Helena, MT 59626**

**State Social Security Administrator  
Public Employees Retirement Division  
100 North Park, Suite 220  
P.O. Box 200131  
Helena, MT 59620-0131  
(406) 444-3154**

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**I.     COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**PAYROLL WITHHOLDINGS AND EMPLOYER PAYMENTS - continued:**

**Social Security and Medicare - continued:**

**25.   Compliance Requirements - continued:**

Internal Revenue Service  
10 West 15th Street, Suite 2300  
Helena, MT 59626

A publication entitled “Federal-State Reference Guide - Social Security Coverage and FICA Reporting by State and Local Government Employers” can be obtained by calling the IRS at 1-800-829-3676. In addition, the Internal Revenue Code, Social Security Act and related regulations, rulings and case law should be consulted as necessary. Section 218 agreements for a particular local government should be on file with the local government. In addition, a copy should be available from Montana’s Social Security Administrator, the Public Employees Retirement Division.

- The employer and employee tax rates for Social Security are both 6.2% (12.4% total). The employer and employee tax rates for Medicare are both 1.45% (2.9% total). The wage base limit (i.e., the maximum wage that is subject to tax) for Social Security changes periodically. For 2003, the limit was \$87,000; for 2004, the limit was \$87,900; for 2005 the limit was \$90,000; and for 2006 the limit was \$94,200. There is no wage base limit for Medicare. Also, payments deducted from an employee’s gross pay for cafeteria plans (aka, Section 125 plans) are not subject to social security and Medicare withholdings.

**Suggested Audit Procedures:**

- Determine whether the local government entity is covered by a Section 218 agreement. If it is, obtain and review a copy of the Section 218 agreement.
- As part of payroll testing, determine that employee coverage for Social Security and Medicare is in accordance with the entity’s Section 218 agreement.
- If the entity is not covered by a Section 218 agreement, determine that employee coverage for Social Security and Medicare is in accordance with applicable federal laws and regulations.
- For employees covered by Social Security and/or Medicare under either a Section 218 agreement or federal laws and regulations, test to determine that employee withholdings and employer contributions are in accordance with applicable federal laws and regulations. For selected individuals whose wages exceed the Social Security wage base limit, verify that no Social Security tax was withheld for the

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**I.     COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**PAYROLL WITHHOLDINGS AND EMPLOYER PAYMENTS - continued:**

**Social Security and Medicare - continued:**

**Suggested Audit Procedures - continued:**

portion of the wages that exceeded the wage base limit. Also, verify that Medicare tax was withheld on all wages, including the portion of the wages that exceeded the Social Security wage base limit.

**FEDERAL INFORMATION RETURNS:**

**26.   Compliance Requirement:**

- The entity must report on a Federal Information Return, Form 1099-MISC, all payments of \$600 or more which the entity makes during a calendar year to anyone, other than a corporation or tax-exempt organization, who is not an employee. (U.S. Internal Revenue Service Codes)

(**Note:** The following are some examples of payments to be reported on Form 1099-MISC: (For a complete list, contact the IRS):

- Professional service fees, such as fees to attorneys (including corporations), accountants, architects, contractors, subcontractors, etc.
- Payments by attorneys to witnesses or experts in legal adjudication.)

**Suggested Audit Procedure:**

- As part of expenditure testing, determine that the entity filed a Form 1099-MISC for each payee who was not a corporation or tax-exempt organization to which the entity paid \$600 or more for contracted services during the calendar year.

**IMMIGRATION AND NATURALIZATION SERVICE (INS) FORM I-9:**

**27.   Compliance Requirement:**

- An employer is responsible for ensuring that a completed Form I-9 is retained on file for all employees hired after November 6, 1986. Section 1 of the Form is to be completed and signed by the employee at the time of hire. The employer is required to complete Section 2 by examining evidence of identity and employment eligibility within three business days of the date employment begins.

**Suggested Audit Procedure:**

- Verify that the county has a completed Form I-9 on file for any employee hired after November 6, 1986.

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# **I. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

## **RECORDKEEPING:**

### **28. Compliance Requirement:**

- OMB Circular A-87 and Section 39-3-401, MCA, require employers to keep time and effort records. In reviewing the School Accounting Manual Section 5-1700 it also suggests that the following other records be kept, which seem to be relevant to a county government:
  - ◆ Monthly payroll recap
  - ◆ Monthly Tickler file
  - ◆ Payroll Manual/Notebook
  - ◆ Decedent's Designation to Receive Warrants

### **Suggested Audit Procedure:**

- Determine if time and effort records were kept as required by federal and state laws and regulations. Also, check to see if other records were kept as suggested above.

## **EMPLOYEE PAY STUB:**

### **29. Compliance Requirement:**

- All employers in this state when making payment to employees for salaries or wages shall, upon making such payment, give to the employee an itemized statement setting forth moneys deducted because of state and federal income taxes, social security, or any other deductions together with the amount of each deduction. Where no deduction is made, the employer shall give to the employee a statement that the payment does not include any such deductions. (Section 39-3-101, MCA)

### **Suggested Audit Procedure:**

- Through inquiry and observation determine if employee pay stubs include the information as required by Section 39-3-301, MCA)

## **NEW HIRE REPORTING:**

### **30. Compliance Requirements:**

- Federal law states that an "employer" for New Hire reporting purposes is the same as for Federal income tax purposes (as defined by Section 3401(d) of the Internal Revenue Code of 1986) and includes any governmental entity or labor organization. At a minimum, in any case where an employer is required to have an employee complete a W-4 form, the employer must meet the New Hire reporting requirements.

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# **I.     COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

## **NEW HIRE REPORTING - continued:**

### **30.   Compliance Requirements - continued:**

(Note: For more information regarding this Federal law see:

<http://www.acf.hhs.gov/programs/cse/newhire/employer/publication/nhreporting/definition.htm>

and for a listing of state new hire reporting contacts see:

[http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/nh\\_matrix.htm](http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/nh_matrix.htm)  
- MT)

- The penalty set by Federal law for failing to comply with the New Hire reporting requirements is set at \$25 per newly hired employee. If, however, there is a conspiracy between the employer and the employee not to report, the penalty may not exceed \$500.
- This law requires every Montana employer to report a minimal amount of information on each new employee hired or rehired on or after October 1, 1997. This information includes: Employer: *Name; Address; Federal Employer*; Employee: *Name; Address; Social Security #; Date of Hire Identification Number*.
- Reports must be submitted within 20 days of the date the employee is hired or rehired. For more information see the Department of Revenue's Web site at <http://mt.gov/revenue/formsandresources/forms/newhirereporting.pdf>  
(Section 40-5-922, MCA)

### **Suggested Audit Procedure:**

- Determine if the County hired any employees during the audit period. If so, verify the county remitted the appropriate information to the Department of Revenue within 20 days of the new employee's hiring date.

## **LOCAL GOVERNMENT CONTRACT AUTHORITY**

### **31.   Compliance Requirement:**

- **Effective October 1, 2005:** It is within a county's contract authority to enter into any contract necessary for the exercise of its power, including but not limited to a contract for reimbursement that may require that the county be reimbursed for the cost of basic course training if an employee leaves employment before completing a reasonable period of service. (Section 7-1-2105(6), MCA) (**Note:** Section 7-32-4139, MCA, gave statutory authority to cities and towns for a hiring contract provision requiring that the city or town be reimbursed for the cost of a police officer's basic course training if the officer leaves employment as a police officer before completing at least

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**I.       COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

**LOCAL GOVERNMENT CONTRACT AUTHORITY - continued**

**31.   Compliance Requirement - continued:**

36 months of service. The 2005 Legislature (HB 743) repealed 7-32-4139 on the finding that the ability to include these provisions in any employment contract is within the contract authority granted to local governments and statutory authorization is unnecessary. Section 7-1-2105, above, clarifies this contract authority for counties.)

**Suggested Audit Procedure:**

- **None** – This compliance requirement is included for informational purposes only.